

**KAYUSAR SDN BHD
v.
DIRECTOR GENERAL OF INLAND REVENUE**

 Court of Appeal, Putrajaya

 April 27th, 2022

 Legal Department, IRBM

JUDGES

Ya Dato' Lee Swee Seng

Datuk Supang Lian

Dato' Gunalan A/L Muniandy

COUNSEL FOR DGIR

Ahmad Isyak Bin Mohd Hassan

Mohammad Danial Bin Ahmad

COUNSEL FOR TAXPAYER

Hii Din Chiang

*[Messrs. Loke King Goh @
Partners Advocate]*

Keywords: disposal of property Section 25 – Para 23 of Schedule 2 - Real Property Gains Tax Act 1976

The taxpayer entered into a sale and purchase agreement selling a condominium unit at RM398,000.00 equal to acquisition price. DGIR charged the gain from the disposal based on the market value determined by the Jabatan Penilaian dan Perkhidmatan Harta (JPPH). The issues relate to Section 25 RPGTA and whether connected persons are required to be considered under Para 23 Schedule 2 RPGTA.

It's proven that the disposal price is not based on market value. Section 25(2) RPGTA empowers DGIR to disregard and/or vary the transaction as the transaction has a direct effect to the chargeability of tax. The taxpayer failed to prove the market value determined by JPPH was erroneous and excessive. There is no requirement of the transaction must be between connected persons before Section 25(2) RPGTA can be invoked. SCIT findings were on Section 25(2) RPGTA. Taxpayer's appeal at SCIT and High Court dismissed.

The Court of Appeal unanimously found the SCIT and the High Court did not commit any error law in their decision. The DGIR is entitled to consider the market value of the property especially with 3 years' duration between acquisition and disposal of the property. Onus was on the taxpayer to prove that the market value determined by JPPH is erroneous. The taxpayer had failed to discharge its burden under its own name on 15.5.2014. There was no mention of the trust in the sale.

The Appellant's appeal is dismissed with cost.